

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

LOUIS J. CLAY, JR.

PETITIONER

VERSUS

CIVIL ACTION NO. 5:10-cv-6-DCB-MTP

MARGARET BINGHAM

RESPONDENT

ORDER

On March 22, 2010, an order [7] from the United States Court of Appeals for the Fifth Circuit was entered in the above referenced civil habeas action. The Fifth Circuit's order [7] held that the petitioner's "motion for authorization to file a second or successive § 2254 application is DENIED AS UNNECESSARY IN PART; DENIED IN PART." Having reviewed that order [7], this court has come to the following conclusion.

According to the order [7] entered by the Fifth Circuit, the petitioner presented as grounds for habeas relief the following: (1) the state habeas court improperly denied him leave to proceed *in forma pauperis* in a 2008 proceeding; (2) his arrest was illegal; (3) his indictment was defective; (4) he was denied an impartial jury; (5) he was denied discovery and exculpatory evidence; (6) prejudiced testimony of a physician was presented at trial; (7) the district court gave an erroneous jury instruction inconsistent with the indictment; (8) the trial judge should have recused himself; (9) his due process rights were violated; (10) the court erred by sentencing him as an habitual offender; (11) his right against double jeopardy was violated; and (12) he was denied counsel on appeal. The Fifth Circuit found that the petitioner's claim relating to being denied leave to proceed *in forma pauperis* in a 2008 state proceeding (Ground 1) "arose after his first federal application was denied; thus, it is not successive." *Order* [7] p. 2. Therefore, this court has determined that the respondent must file a response as to that ground for habeas relief. The other grounds for habeas relief were determined by the Fifth Circuit to be successive and

were not authorized by the Fifth Circuit to be considered by this court. *See Order* [7].

Therefore, the only ground to be considered by this court is ground one wherein the petitioner states that he was denied leave to proceed *in forma pauperis* in a 2008 state proceeding which arose after his first federal application was denied. *Id.* Accordingly, it is hereby

ORDERED that pursuant to the order [7] of the United States Court of Appeals for the Fifth Circuit that the instant civil habeas action be reopened.

IT IS FURTHER ORDERED that the respondent, through Attorney General Jim Hood, file an answer or other responsive pleading, such as a motion to dismiss, in this cause as to the petitioner's ground one that the state habeas court improperly denied him leave to proceed *in forma pauperis* in a 2008 proceeding relating to his charge of aggravated assault as a habitual offender in the Circuit Court of Wilkinson County, Mississippi, within 20 days of the service upon the said General Hood of a copy of this order.

IT IS FURTHER ORDERED that the Clerk of Court shall serve, by certified mail, a copy of the petition [1] and memorandum in support [3] filed herein, a copy of the order [7] entered by the United States Court of Appeals for the Fifth Circuit on March 22, 2010, and a copy of this order upon Honorable Jim Hood, Attorney General of the State of Mississippi. The Clerk of Court shall also serve a copy of this order upon petitioner by mailing same to petitioner's last known address.

Petitioner is warned that his failure to timely comply with any order of this court or his failure to keep this court informed of his current address may result in the dismissal of this case.

SO ORDERED, this the 12th day of April, 2010.

s/David Bramlette
UNITED STATES DISTRICT JUDGE